

a member of the public can be expected to know either whether entertainments duty is payable in respect of part of that lump sum or how much of the lump sum, if any, is chargeable with duty.

As I read the Proclamation, therefore, duty may be chargeable upon lump sum payments in certain circumstances and the Crown no doubt has various remedies for recovering the duty where it is payable, but when it comes to a prosecution under section 5 this can only succeed where there has been a failure to pay duty in respect of somebody admitted on payment. I think it would be unduly stretching the meaning of words to describe the transaction proved in this case as an admission on payment. On the evidence it is not clear how long after payment the witnesses left the Cafe, but if they paid just before they left, as many people probably do, the transaction might well be described as a "departure on payment".

I do not think there is any difference in effect between a "payment on admission" which is defined by the Proclamation and an "admission on payment", so that there can, of course, be successive dutiable payments in respect of different parts of a place of entertainment, but in each case, in order to come within section 5, the admission must be an admission on payment.

Appeal dismissed.

TAN PHEE TECK v. TAN TIANG HEE.

[Court of Appeal (Mathew, C.J. (F.M.), Storr and Knight, JJ.) June 6, 1952]

[Singapore—Civil Appeal No. 13 of 1951]

Will—Construction—Chinese custom—Adoption by father of a child to be a son to his son.

This is an appeal on a point of interpretation of the Will of a Testator named Tan Kim Chuan. The part of the Will in question reads "As to the remaining third thereof in trust for all the children (including those whom he may adopt) of my nephew Tan Kek Tiang." The appellant had been adopted by Tan Kek Tiang's father to be a son of Tan Kek Tiang. The question arises as to whether the words "whom he may adopt" mean children actually adopted by Tan Kek Tiang or whether their meaning can be stretched to include children adopted on his behalf by his father according to Chinese custom.

Held (per Mathew, C.J. (F.M.) and Storr, J.) on a true construction of the clause which is clear and unambiguous, and considering that the Will was drawn in the English language and was interpreted to the Testator before he executed it, the act of adoption must be made personally by Tan Kek Tiang.

Per Knight, J., (dissenting) that bearing in mind the stronger attachment to Chinese custom by a Chinese Testator at the time when the Will was executed, and the probability of a genuine mistake in interpretation, the Testator would have made his intention very clear if he had intended to exclude a child adopted in a perfectly valid manner in accordance with long-established Chinese custom.

COURT OF APPEAL.

Philip Hoalim for the appellant.

A. N. Mitra for the respondent.

Cur. Adv. Vult.

Mathew, C.J., (F.M.) :—This is an appeal from an order of the learned Chief Justice, Singapore, dismissing the applicant-appellant's claim to benefit under a will made by the testator Tan Kim Chuan on the 4th day of August, 1896.

The point in this appeal is a short one and concerns the interpretation which should be placed on the following passage in the Will :—

"As to the remaining third thereof in trust for all the children (including those whom he may adopt) of my nephew Tan Kek Tiang."

It is not seriously disputed by the respondent that the appellant is not the adopted son of Tan Kek Tiang, and indeed the Registrar has found that he was so. The Registrar's finding, in his certificate of the 26th May, 1951, is as follows :—

"I find it proved that the said Tan Phee Teck was adopted by Tan Kim Quan to be a son to Tan Kek Tiang deceased, the nephew of the abovenamed Tan Kim Chuan deceased."

The question for decision is whether the words "(including those whom he may adopt)" require that the adoption must be the personal act of Tan Kek Tiang, if the adopted child is to share under the will.

Counsel for the appellant has argued at some length that the testator must have intended that the adopted child of Tan Kek Tiang if adopted by Chinese custom should be entitled to share. He has pointed out with some force that if any other interpretation is put on this clause it has the effect of ousting well established Chinese custom. The whole purpose of a father adopting a child to be a son to his son is to avoid the possibility of the son's line dying out. As Tan Kek Tiang was in a poor state of health, and it did not appear likely that he would survive to an age when he personally could adopt a son by his own act, his father adopted a son (the present appellant) to be the son to Tan Kek Tiang.

I have considerable sympathy with the appellant, but I find myself unable to put a construction on the words "whom he (Tan Kek Tiang) may adopt" which will have the effect of altering the clear and unambiguous meaning of the words, which is that the act of adoption, if it is to be effective under the will, must be made personally by Tan Kek Tiang.

One can only assume that this particular form of words was used deliberately and that the testator understood their significance when the will drawn in the English language was translated to him in Hokkien before he signed it.

I would dismiss the appeal and order that the costs here and in the Court below be paid out of the estate.

Storr, J.:—By an Order of Court dated 13th October, 1950, in Originating Summons No. 250 of 1950, the learned Chief Justice ordered "that the Registrar do hold a further enquiry as to whether the said applicant (appellant) is the adopted son of the abovenamed Tan Kek Tiang deceased, the nephew of the abovenamed Tan Kim Chuan deceased."

The Registrar duly held the enquiry and in his Certificate dated 26th May, 1951, stated:—

"I find it proved that the said Tan Phee Teck (appellant) was adopted by Tan Kim Quan (father of Tan Kek Tiang) to be a son of Tan Kek Tiang deceased, the nephew of the abovenamed Tan Kim Chuan deceased".

On that finding the appellant took out an Originating Summons, No. 190 of 1951, to determine, *inter alia*, the following question:—

"Whether Tan Phee Teck as found by the Registrar in his Certificate in Originating Summons No. 250 of 1950 dated the 26th day of May 1951, 'I find it proved that the said Tan Phee Teck was adopted by Tan Kim Quan to be a son to Tan Kek Tiang deceased, the nephew of the abovenamed Tan Kim Chuan deceased' comes within the scope of the trusts of the Will of Tan Kim Chuan the abovenamed deceased namely 'In trust for all the children (including those whom he may adopt) of my nephew Tan Kek Tiang who being sons shall attain the age of 21 years in equal shares and if there shall be only one child, the whole to be in trust for that child'."

The Originating Summons came before the learned Chief Justice on 13th November, 1951, who made an order that "the applicant (appellant) is not within the class entitled to share. Costs solicitor and client out of estate". The appellant brings this appeal against that order of the learned Chief Justice.

The only point for decision in this appeal is whether the appellant—claimant—is entitled to be included in the class of adopted children of Tan Kek Tiang covered by the words in a clause in the Will of the Testator, Tan Kim Chuan, reading: "As to the remaining third thereof in trust for all the children (including those whom he may adopt) of my nephew Tan Kek Tiang".

Mr. Hoalim for the appellant argued that the testator having Chinese Custom in mind meant "including adopted children" or "including those whom he may adopt according to Chinese Custom" in which case he submitted the finding of the Registrar would bring the appellant within the class to benefit.

On the true construction of the clause and bearing in mind that this was a will in the English language and was read over and explained to the Testator in the Hokkien dialect before he executed it, I have come to the conclusion that the words "whom he may adopt" must mean that the adoption intended was a

personal act by the nephew Tan Kek Tiang and not any adoption that might take place according to Chinese Custom by any other person on his behalf either before or after his death. In whatever way the words "whom he may adopt" were interpreted to the Testator, the word "he" would in my opinion be predominant and could therefore only refer to a personal act of Tan Kek Tiang.

I confess that I should like to have found some reason for deciding the matter in the appellant's favour, because I strongly suspect that the verbiage of the clause in question was introduced into it by the draftsman who may or may not have had a knowledge of Chinese Custom and who was drafting an English Will for a Chinese testator who apparently did not understand English. However, I have to construe the language of the Will, which was admitted to probate some 40 odd years ago, as it stands and that language is plain and unambiguous and can only mean what it says in plain language which, as I have stated above, means that for the appellant to come within the class mentioned he must have been adopted by the personal act of Tan Kek Tiang and by no one else.

I would dismiss the appeal and order that the costs here and in the Court below be paid out of the estate as between solicitor and client.

Knight, J.:—This is an appeal from a decision of the learned Chief Justice, Singapore, on a point of interpretation of the will of a testator named Tan Kim Chuan who died in Singapore on 3rd September, 1900.

Taken briefly the testator directed that after the payment of certain legacies, his trustees should invest his residuary estate in approved trustee stock and on the deaths of the named beneficiaries this estate should be divided into three portions in trust for various children of his two sons and his nephew. The difficulty which arises in the interpretation of the clause in the will dealing with the last of these three portions i.e. that share of the residuary estate to be held in trust for the children of the testator's nephew.

The relevant parts of the clause read as follows:—

"As to the remaining third thereof in trust for all the children (including those whom he may adopt) of my nephew Tan Kek Tiang."

At the hearing of the Originating Summons before the Registrar the appellant's aunt stated (and this is admitted) that Tan Kek Tiang's father (one Tan Kim Quan) in fact adopted the appellant according to Chinese custom to be a son of Tan Kek Tiang and that the latter did not himself adopt the appellant, though it is said that he subsequently ratified such adoption by taking the boy to his house.

The question thus arises as to whether the words "whom he may adopt" mean "children actually adopted by Tan Kek Tiang personally" or whether its meaning can be stretched to include children adopted on his behalf i.e. to read "his adopted children."

The learned Chief Justice decided that on a strict interpretation of the clause in question a child who was what one might call vicariously adopted in these circumstances could not take under the will and it is against this decision that the appeal has been lodged in this Court. The point is not without difficulty as the Courts are naturally disinclined to intervene with the expressed wishes of the testator unless an inconsistency is palpably obvious. Counsel for the respondent points out, moreover, that this particular testator may well have meant just exactly what he said and that he intended to exclude all children not adopted personally by his nephew.

As against this, however, it must be remembered that in 1896 when the will was executed, Singapore was a very different place from what it is to-day, and it seems certain that the testator would have been even less inclined to depart from traditional Chinese custom than would a Chinese testator to-day. We are told, moreover, and it is not disputed that from time immemorial it has been a recognised practice of Chinese nationals to adopt children on their son's behalf—even at times, after the death of their son, and that such adoption, according to Chinese custom, is perfectly legal and valid. It must also be remembered that this will was drawn in the English language and before it was executed by the testator (writing in Chinese) its provisions were translated into Hokkien by an interpreter. In these circumstances it seems far more probable that a genuine mistake arose in interpretation than that the testator deliberately set out to exclude a child adopted in a perfectly legal and valid manner which was, and is, fully recognised by the community of which he was a member.

In my opinion, moreover, if the testator had intended to commit a flagrant breach of long-established Chinese custom he would have made such intention very clear. Could he so casually, and in such slipshod language, have disinherited a class of persons which, according to his customs, was fully entitled to inherit? I do not think so—and although I have had the benefit of reading the learned judgments of the President and my brother Storr, J., I should have allowed this appeal.

Appeal dismissed.

HAJI YUSOF BIN KEROMO

v.

PUBLIC PROSECUTOR.

[App. Crim. Juris. (Buhagiar, J.) November 8, 1952]

[J. B. — Criminal Appeal No. 18 of 1952]

Penal Code, s. 193 — Contradictory statements made in course of police investigation and at trial — Where accused retracts his previous false statements after caution by trial Judge.

The appellant had made certain statements in the course of police investigation, and before the Sessions Court he denied having made such statements. He was charged under section 191 of the Penal Code punishable under section 193.

Held: (1) The charge against the appellant was that he said in the Sessions Court that he did not make certain statements in the course of police investigations when in fact he did so and it was immaterial whether or not such statements were true; (2) the fact that a statement had not been proved formally in a proceeding during which a witness is alleged to have made a false statement is not a bar to proving that statement in a subsequent proceeding; (3) where a witness, having made a false statement, is cautioned by the trial Judge and is informed of various circumstances which seem to establish the falsehood of that statement, and the witness after such caution acknowledges that his earlier statement was false and corrects it, it is not desirable to subject such witness to prosecution for perjury; but where the witness retracts his false statements, made on a solemn oath in a witness box, only when he discovers that his fraud has been detected, no Court can infer from the subsequent correction or retraction that there was no intention to give false evidence.

Cases referred to:—

- (1) *Muthusamy v. Public Prosecutor* (1948) M.L.J. 57.
- (2) *Jusoh bin Awang v. Public Prosecutor* (1950) M.L.J. 69.

CRIMINAL APPEAL.

M. Ismail for the appellant.

M. Suffian (D.P.P.) for the respondent.

Cur. Adv. Vult.

Buhagiar, J.:—This is an appeal from the conviction and sentence of the learned President of the Sessions Court at Pontian Kechil. The facts in this case are briefly as follows:

Some time in March, 1951, a Chinese named Lee Kin Guan was arrested for illegal sale of rubber. In the course of the investigation, the appellant was interviewed by Police Sergeant 2013, Bachik bin Mohamed, to whom the appellant made a statement; this statement was taken down in writing by the said Police Sergeant. The appellant was called as a witness for the prosecution in the trial of the said Lee Kin Guan (Pontian Magistrate's Court Arrest Case No. 51 of 1951) and at that trial the appellant gave the following evidence:—